



RFP No. 2007-02

WEB DEVELOPMENT SERVICES

Iowa Alcoholic Beverages Division

February 21, 2007



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SECTION 1 INTRODUCTION

1.1 Purpose

The purpose of this Request For Proposals is to solicit proposals from qualified Vendors to provide Web development services for the Iowa Alcoholic Beverages Division (Division), with the possibility of project extensions at the sole discretion of the Division. As fully described in the following, the successful Vendor shall collaborate with representatives from the Division to rewrite, rebuild, and reengineer the existing Electronic Licensing application to produce a fully-functioning, standardized, maintainable and expandable application.

1.2 Duration

The Division intends to award a contract beginning on or about the date listed in the Procurement Timetable, Section 2.4. Contractors are encouraged to set a timeline and specify a completion date of not more than six to eight weeks from the award date.

1.3 Definitions

1.3.1 Request for Proposal (RFP)

1.3.2 Iowa Alcoholic Beverages Division (Division)

1.3.3 Electronic Licensing Application (E-Licensing)

1.4 Background Information

The Division's E-Licensing system was implemented on December 15, 2005 and enables roughly 10,000 liquor licensees to apply for a license and pay the license fee electronically. The system allows over 1,000 licensing authorities and 91 separate insurance companies to endorse license applications online, eliminating the paper application renewal process previously utilized by both groups.

The proposed project is to rebuild and standardize the existing E-Licensing reporting and online functions and processes. Proposed enhancements will allow the Division to reallocate the current maintenance resources to new feature and customer reporting functions that have been requested by both licensing authorities and public/community entities.

The Division has determined that additional costs to update the system mandate that the application be rebuilt and standardized. The system will be reengineered utilizing the business process knowledge gained during the original development process, ensuring maximum benefit from funding already invested, while providing superior long term value.

SECTION 2 ADMINISTRATIVE INFORMATION

2.1 Issuing Officer

The Issuing Officer, identified below, is the sole point of contact regarding the RFP from the date of issuance until selection of the successful Vendor.

Nicole Gehl, Operations Manager
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, IA 50021

E-mail: Gehl@IowaABD.com

2.2 Restriction on Communication

From the issue date of this RFP until announcement of the successful Vendor, Vendors may contact only the Issuing Officer. The Issuing Officer will respond only to questions regarding the procurement process. Questions related to the interpretation of this RFP must be submitted in writing or via e-mail to the Issuing Officer by 4:30 p.m., Central Standard Time, on the date listed in the Procurement Timetable, Section 2.4. Verbal questions related to the interpretation of the RFP will not be accepted. Vendors may be disqualified if they contact any state employee other than the Issuing Officer.

2.3 Downloading the RFP from the Internet

The original RFP will be posted on the Iowa Alcoholic Beverages Division's home page at: <http://www.IowaDivision.com> and <http://bidopportunities.iowa.gov>.

2.4 Procurement Timetable

The following dates are set forth for informational and planning purposes; however, the Division reserves the right to change the dates.

Issue RFP	February 21, 2007
Intent to Bid Form and Questions Due	March 2, 2007
Answers to Questions Issued to Bidders (via e-mail)	March 9, 2007
Closing Date for Receipt of Bid Proposals	March 16, 2007
Announce Successful Vendor (mail)	March 23, 2007
Anticipated Contract Signing	March 30, 2007
Begin Contract	March 30, 2007
Project Completion Date	May 25, 2007
Contract Completion	June 29, 2008

2.5 Questions, Requests for Clarification, and Suggested Changes

Vendors are invited to submit written or e-mail questions, and requests for clarifications. The specific section of the RFP, the page and section numbers(s) must be referenced. These must be received by the Issuing Officer before 4:30 p.m., Central Standard Time,

on the date listed in the Procurement Timetable, Section 2.4.

Vendors who submitted the Intent to Bid form will receive an e-mail response no later than the date listed in the Procurement Timetable in Section 2.4.

The Division's written or e-mail responses will be considered part of the RFP. If the Division decides to adopt a suggestion to make a change in the RFP, the Division will issue an amendment to the RFP.

Oral questions will not be permitted. The Division assumes no responsibility for verbal representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFP.

2.6 Amendment to the RFP and Bid Proposal and Withdrawal of Bid Proposal

The Division reserves the right to amend the RFP at any time. The Vendor shall acknowledge receipt of an amendment in its proposal. If the amendment occurs after the closing date for receipt of bid proposals, the Division may, in its sole discretion, allow Vendors to amend their bid proposals in response to the Division's amendment if necessary.

The Vendor may amend its bid proposal. The amendment must be in writing, signed by the Vendor and received by time set for receipt of proposals. Electronic mail and faxed amendments will not be accepted.

Vendors who submit proposals in advance of the deadline may withdraw, modify, and resubmit proposals at any time prior to the deadline for submitting proposals. Vendors must notify the Issuing Officer in writing if they wish to withdraw their proposals.

2.7 Mandatory Intent to Bid Form

An Intent to Bid form (Attachment #1) must be e-mailed, mailed, sent via delivery service or hand delivered by the Vendor or the Vendor's representative to the Issuing Officer and received by 4:30 p.m., Central Standard Time, on the date listed in the Procurement Timetable, Section 2.4. The Intent to Bid form must include the Vendor's name, mailing address, electronic mail address, fax number, telephone number, a statement of intent to bid for the Electronic Licensing Application contract, and authorizing signature.

Submitting an Intent to Bid form is a mandatory condition to submit a bid proposal and to ensure receipt of responses to Vendor's questions and amendments to the RFP. Failure to submit an Intent to Bid form by the deadline specified will result in the rejection of the Vendor's bid proposal.

2.8 Submission of Bid Proposals

The Division must **receive** the bid proposal at 1918 SE Hulsizer Road, Ankeny IA 50021 before 4:30 p.m., Central Standard Time, on the date listed in the Procurement Timetable, Section 2.4. **This is a mandatory requirement and will not be waived by the Division. Any bid proposal received after this deadline will be rejected and returned unopened to the Vendor.** Vendors mailing bid proposals must allow ample

mail delivery time to ensure that the bid proposal is received prior to the deadline. Postmarking by the due date will not substitute for actual receipt of the bid proposal. Electronic mail and faxed bid proposals will not be accepted.

Vendors must furnish all information necessary to evaluate the bid proposal. Bid proposals that fail to meet the mandatory requirements of the RFP could be disqualified. Verbal information provided by the Vendor shall not be considered part of the Vendor's proposal.

2.9 Cost of Preparing the Bid Proposal

The cost of preparation and delivery of the bid proposal are solely the responsibility of the Vendor.

2.10 Rejection of Bid Proposals

The Division reserves the right to reject any or all bid proposals, in whole and in part, received in response to this RFP at any time prior to the execution of a written contract. Issuance of this RFP in no way constitutes a commitment by the Division to award a contract. This RFP is designed to provide Vendors with the information necessary to prepare a competitive bid proposal. This RFP is for the Division's benefit and is intended to provide the Division with competitive information to assist in the selection of a Vendor to provide services. It is not intended to be comprehensive and each Vendor is responsible for determining all factors necessary for submission of a comprehensive bid proposal.

2.11 Disqualification

The Division shall reject outright and shall not evaluate proposals for any one of the following reasons:

- 2.11.1** The Vendor fails to deliver the bid proposal by the due date and time.
- 2.11.2** The Vendor states that a service requirement cannot be met.
- 2.11.3** The Vendor's response materially changes a service requirement.
- 2.11.4** The Vendor's response limits the rights of the Division.
- 2.11.5** The Vendor fails to include information necessary to substantiate that it will be able to meet a service requirement. A response of "will comply" or merely repeating the requirement is not sufficient. Responses must indicate present capability; representations that future developments will satisfy the requirement are not sufficient.
- 2.11.6** The Vendor fails to respond to the Division's request for information, documents or references.
- 2.11.7** The Vendor fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested in Section 4 of this RFP.
- 2.11.8** The Vendor presents the information requested by this RFP in a format inconsistent with the instructions of the RFP.
- 2.11.9** The Vendor initiates unauthorized contact regarding the RFP with state employees.
- 2.11.10** The Vendor provides misleading or inaccurate responses.

2.12 Nonmaterial and Material Variances

The Division reserves the right to waive or permit cure of nonmaterial variances in the bid

proposal if, in the judgment of the Division, it is in the Division's best interest to do so. Nonmaterial variances include minor informalities that do not affect responsiveness; that are merely a matter of form or format; that do not change the relative standing or otherwise prejudice other Vendors; that do not change the meaning or scope of the RFP; or that do not reflect a material change in the services. In the event the Division waives or permits cure of nonmaterial variances, such waiver or cure will not modify the RFP specifications or other contract requirements if the Vendor is awarded the contract. The determination of materiality is the sole discretion of the Division.

2.13 Reference Checks

The Division reserves the right to contact any reference to assist in the evaluation of the bid proposal, to verify information contained in the bid proposal and to discuss the Vendor's qualifications and the qualifications of any subcontractor identified in the bid proposal.

2.14 Information from Other Sources

The Division reserves the right to obtain and consider information from other sources concerning a Vendor, such as the Vendor's capability and performance under other contracts.

2.15 Verification of Bid Proposal Contents

The content of a bid proposal submitted by a Vendor is subject to verification. Misleading or inaccurate responses shall result in disqualification.

2.16 Bid Proposal Clarification Process

The Division reserves the right to contact a Vendor after the submission of bid proposals for the purpose of clarifying a bid proposal to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the Vendor has provided goods or services to the Division or any other political subdivision wherever located, or requests for corrective pages in the Vendor's bid proposal. The Division will not consider information received if the information materially alters the content of the bid proposal or alters the type of goods and services the Vendor is offering to the Division. An individual authorized to legally bind the Vendor shall sign responses to any request for clarification. Responses shall be submitted to the Division within the time specified in the Division's request. Failure to comply with requests for additional information may result in rejection of the bid proposal as non-compliant.

2.17 Public Records and Requests for Confidential Treatment

The Division may treat all information submitted by a Vendor as public information following the conclusion of the selection process unless the Vendor properly requests that information be treated as confidential at the time of submitting the bid proposal. Iowa Code Chapter 22 governs the Division's release of information. Vendors are encouraged to familiarize themselves with Chapter 22 before submitting a proposal. The Division will copy public records as required to comply with the public records laws.

Any request for confidential treatment of information must be included in the transmittal letter with the Vendor's bid proposal. In addition, the Vendor must enumerate the specific

grounds in Iowa Code Chapter 22 or other applicable law, which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. The request for confidential treatment of information must also include the name, address, and telephone number of the person authorized by the Vendor to respond to any inquiries by the Division concerning the confidential status of the materials.

Any bid proposal submitted which contains confidential information must be conspicuously marked on the outside as containing confidential information, and each page upon which confidential information appears must be conspicuously marked as containing confidential information. Identification of the entire bid proposal as confidential may be deemed non-responsive and disqualify the Vendor.

If the Vendor designates any portion of the RFP as confidential, the Vendor must submit one copy of the bid proposal from which the confidential information has been excised. This excised copy is in addition to the number of copies requested in Section 4 of this RFP. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.

The Division will treat the information marked confidential as confidential information to the extent such information is determined confidential under Iowa Code Chapter 22 or other applicable law by a court of competent jurisdiction.

In the event the Division receives a request for information marked confidential, written notice shall be given to the Vendor seven calendar days prior to the release of the information to allow the Vendor to seek injunctive relief pursuant to Section 22.8 of the Iowa Code.

The Vendor's failure to request confidential treatment of material will be deemed by the Division as a waiver of any right to confidentiality which the Vendor may have had.

2.18 Copyrights

By submitting a bid proposal, the Vendor agrees that the Division may copy the bid proposal for purposes of facilitating the evaluation of the bid proposal or to respond to requests for public records. The Vendor consents to such copying by submitting a bid proposal and warrants that such copying will not violate the rights of any third party. The Division shall have the right to use ideas or adaptations of ideas that are presented in the bid proposals.

2.19 Release of Claims

By submitting a bid proposal, the Vendor agrees that it will not bring any claim or cause of action against the Division based on any misunderstanding concerning the information provided herein or concerning the Division's failure, negligent or otherwise, to provide the Vendor with pertinent information as intended by this RFP.

2.20 Presentations

Vendors may be required to make a presentation of the bid proposal. The presentation

may occur at the Division's offices or at the offices of the Vendor. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of the Division. The presentation may include slides, graphics and other media selected by the Vendor to illustrate the Vendor's bid proposal. The presentation shall not materially change the information contained in the bid proposal.

2.21 Evaluation of Bid Proposals Submitted

Bid proposals that are timely submitted and are not subject to disqualification will be reviewed in accordance with Section 5 of the RFP. The Division will not necessarily award any contract resulting from this RFP to the Vendor offering the lowest cost to the Division. Instead, the Division will award the contract to the compliant Vendor whose proposal receives the most points in accordance with the evaluation criteria set forth in Section 5 of this RFP.

2.22 Award Notice and Acceptance Period

Notice of intent to award the contract will be sent by mail to all Vendors submitting a timely bid proposal. Negotiation and execution of the contract shall be completed no later than the date listed in the Procurement Timetable, Section 2.4. If the apparent successful Vendor fails to negotiate and deliver an executed contract by this date, the Division may cancel the award and award the contract to the next highest ranked Vendor.

2.23 Definition of Contract

The full execution of a written contract shall constitute the making of a contract for services and no Vendor shall acquire any legal or equitable rights relative to the contract services until the contract has been fully executed by the successful Vendor and the Division.

2.24 Choice of Law and Forum

This RFP and the resulting contract are to be governed by the laws of the State of Iowa. Changes in applicable laws and rules may affect the award process or the resulting contract. Vendors are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFP shall be brought in the appropriate Iowa forum.

2.25 Restrictions on Gifts and Activities

Iowa Code Chapter 68B restricts gifts which may be given or received by state employees and requires certain individuals to disclose information concerning their activities with state government. Vendors are responsible to determine the applicability of this Chapter to their activities and to comply with the requirements. In addition, pursuant to Iowa Code section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

SECTION 3 SCOPE OF SERVICES

3.1 Service Requirements

The Vendor shall rewrite, rebuild and reengineer E-Licensing in a fashion that allows for the application to be maintained and expanded at a lower cost than would have been

required by keeping the existing application. Further, the Vendor may use existing source code if the existing source code is fully-functioning, maintainable and expandable.

3.1.1 The Vendor shall rewrite the application to operate on a Microsoft IIS (Internet Information Server).

3.1.2 All programming shall be MS .NET 2.0 (or higher) compatible. The Vendor shall refrain from the following:

- The Vendor shall not use proprietary third party non-standard development tools.
- The Vendor shall not use SQL statements in place of Stored Procedures.
- The Vendor shall not hard code data driven program elements into the application.

3.1.3 If applicable, the Vendor shall develop and design the application's database(s) in C# and to operate on MS SQL Server 2005.

3.1.4 The Vendor shall provide, in detail, diagrams and descriptions outlining business continuity in the event of a disaster.

3.1.5 The Vendor shall provide the Division with a fully functioning parallel testing environment in order to test, experiment, assess and examine the work product.

3.1.6 The Vendor shall provide reasonable training and instruction to Division employees regarding the functionality of the new application.

3.1.7 The Vendor shall adhere to all applicable standards as defined by 11 Iowa Administrative Code Chapter 25 (Information Technology Operational Standards).

- http://das.ite.iowa.gov/standards/enterprise_it/index.html
- http://das.ite.iowa.gov/standards/enterprise_it/standard.html

Further, the Vendor shall comply with the Department of Administrative Services-Information Technology Enterprises EBSOA Best Practices.

- http://das.iowa.gov/tgb/IT_research/standards_best_prac.html

3.2 Enhancements

In addition to rewriting the existing application, the Vendor shall produce the following E-Licensing enhancements:

3.2.1 The Vendor shall provide a new navigation concept or revise the existing navigation concept to make it easier for the user to work with the application. Specifically, the application shall support out-of-order user completion where allowed. The E-Licensing application has multiple processes, with multiple steps that must be completed sequentially by users with specific login privileges. The application needs to show the user their completion status after each step.

3.2.2 The Vendor shall create a function that will automatically send an e-mail(s) to the licensee based upon license status.

3.2.3 The Vendor shall create a function that identifies license types as temporary or permanent based on business rules (to be provided by the Division at a later date). This function will require an analysis of license effective dates.

3.3 Project Completion Date

The Vendor shall complete all work and provide all Deliverables pursuant to this RFP. The Project Completion Date is May 25, 2007.

3.4 Vendor Qualifications

The Vendor shall demonstrate proficiency with databases and information technology systems including the hardware and software needed for E-Licensing. The Vendor shall demonstrate a familiarity with information systems as well as regulatory data collection and automation.

3.4.1 The Vendor shall be an active Microsoft Certified Partner.

3.5 E-Licensing Orientation

In order to obtain an understanding of the system, mechanisms and databases that comprise E-Licensing, the Vendor, upon submitting a qualified Intent to Bid form, will receive the following resources:

- E-Licensing User (Role-Based) Screen Shots
- E-Licensing Database Schematic
- Access to the Existing E-Licensing Test Site

SECTION 4 FORMAT AND CONTENT OF BID PROPOSALS

4.1 Instructions

These instructions prescribe the format and content of the bid proposal. They are designed to facilitate a uniform review process. Failure to adhere to the proposal format may result in the disqualification of the bid proposal.

4.1.1 The bid proposal shall be typewritten on 8.5" x 11" paper.

4.1.2 The bid proposal shall be divided into two parts: (1) the Technical Proposal and (2) the Cost Proposal. The envelope, containing both the Technical and the Cost Proposals shall be labeled with the following information:

**Nicole Gehl, Operations Manager
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, IA 50021**

4.1.3 One (1) original and four (4) copies, and one (1) electronic copy of the bid proposal shall be timely submitted to the Issuing Officer.

4.1.4 If the Vendor designates any information in its proposal as confidential pursuant to section 2.18, the Vendor must also submit one (1) copy of the bid proposal

from which confidential information has been excised. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the bid proposal as possible.

4.1.5 Attachments shall be referenced in the bid proposal.

4.1.6 If a Vendor proposes more than one method of meeting these requirements, each should be labeled and submitted separately. Each will be evaluated separately.

4.2 Technical Proposal

The following documents and responses shall be included in the bid proposal in the order given below:

4.2.1 Transmittal Letter

An individual authorized to legally bind the Vendor shall sign the transmittal letter. The letter shall include the Vendor's mailing address, electronic mail address, fax number, and telephone number.

Any request for confidential treatment of information shall be included in the transmittal letter in addition to the specific statutory basis supporting the request and an explanation why disclosure of the information is not in the best interest of the public. The transmittal letter shall also contain the name, address and telephone number of the individual authorized to respond to the Division about the confidential nature of the information.

4.2.2 Table of contents

The Vendor shall include a table of contents of its bid proposal.

4.2.3 Executive Summary

The Vendor shall prepare an executive summary and overview of the services it is offering, including all of the following information:

4.2.3.1 Statements that demonstrate that the Vendor understands and agrees with the terms and conditions of the RFP and the proposed contract.

4.2.3.2 A vision and mission statement for this program.

4.2.4 Service Requirements

The Vendor shall address each service requirement in Section 3 of the RFP and explain how it plans to approach each requirement. Proposals must be fully responsive to service requirements. Merely repeating the requirements will be considered non-responsive and may disqualify the Vendor. Proposals must identify any deviations from the requirements of this RFP or requirements the Vendor cannot satisfy. Any deviations from the requirements of the RFP or any requirement of the RFP that the Vendor cannot satisfy may disqualify the Vendor.

4.2.5 Background Information

The Vendor shall provide the following general background information:

4.2.5.1 Name, address, telephone number, fax number and e-mail address of the Vendor including all d/b/a's or assumed names or other operating names of the Vendor.

4.2.5.2 Form of business entity, i.e., corporation, partnership, proprietorship, limited liability company.

4.2.5.3 State of incorporation, state of formation, or state of organization.

4.2.5.4 Identity and specify the location(s) and telephone numbers of the major offices and other facilities that relate to the Vendor's performance under the terms of this RFP.

4.2.5.5 Local address and phone number (if any).

4.2.5.6 Number of employees.

4.2.5.7 Type of business.

4.2.5.8 Name, address and telephone number of the Vendor's representative to contact regarding all contractual and technical matters concerning this proposal.

4.2.5.9 Name, address and telephone number of the Vendor's representative to contact regarding scheduling and other arrangements.

4.2.5.10 Name and qualifications of any subcontractors who will be involved with this project.

4.2.5.11 Identify the Vendor's accounting firm.

4.2.5.12 The successful Vendor will be required to register to do business in Iowa. If already registered, provide the date of the Vendor's registration to do business in Iowa and the name of the Vendor's registered agent.

4.2.6 Experience

The Vendor must provide the following information regarding its experience:

4.2.6.1 Number of years in business.

4.2.6.2 Number of years' experience with providing the types of services sought by the RFP.

4.2.6.3 Describe the level of technical experience in providing the types of services sought by the RFP.

4.2.6.4 List all services similar to those sought by this RFP that the Vendor has provided to other businesses or governmental entities.

4.2.6.5 Letters of reference from three (3) previous clients knowledgeable of the Vendor's performance in providing services very similar to the services described in this RFP and a contact person and telephone number for each reference.

4.2.7 Personnel

The Vendor must provide resumes for all key personnel, including the project manager, who will be involved in providing the services contemplated by this RFP. The following information must be included in the resumes:

4.2.7.1 Full name.

4.2.7.2 Education.

4.2.7.3 Years of experience and employment history particularly as it relates to the scope of services specified herein.

4.2.7.4 If key personnel are replaced for any reason, replacement personnel shall hold similar credentials to the person that they are replacing. Prior Division approval is required for the replacement of key personnel.

4.2.8 Terminations, Litigation, Debarment

The Vendor must provide the following information:

4.2.8.1 During the last five (5) years, has the Vendor had a contract for services terminated for any reason? If so, provide full details related to the termination.

4.2.8.2 During the last five (5) years, describe any damages or penalties of anything of value traded or given up by the Vendor under any of its existing or past contracts as it relates to services performed that are similar to the services contemplated by this RFP and the resulting Contract. If so, indicate the reason for the penalty or exchange of property or services and the estimated account of the cost of that incident to the Vendor.

4.2.8.3 During the last five (5) years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Vendor to engage in any business, practice or activity.

4.2.8.4 During the last five (5) years, list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could affect the ability of the Vendor to perform the required services. The Vendor must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the bid proposal or in termination of any subsequent contract. This is a continuing disclosure requirement. Any such matter commencing after submission of a bid proposal, and with respect to the successful Vendor after the execution of a contract, must be disclosed in a timely manner in a written statement to the Division.

4.2.8.5 During the last five (5) years, have any irregularities been discovered in any of the accounts maintained by the Vendor on behalf of others? If so, describe the circumstances of irregularities or variances and disposition of resolving the irregularities or variances.

4.2.9 Proposal Certification

The Vendor shall sign and submit with the bid proposal the document included as Attachment #2 in which the Vendor shall certify that the contents of the bid proposal are true and accurate.

4.2.10 Acceptance of Terms and Conditions

The Vendor shall specifically agree that the bid proposal is predicated upon the acceptance of all terms and conditions stated in the RFP. If the Vendor objects to any term or condition, the Vendor must specifically refer to the RFP page, and section. Objections or responses that materially alter the RFP may be deemed non-responsive and disqualify the Vendor.

4.2.11 Certification of Independence and No Conflict of Interest

The Vendor shall sign and submit with the bid proposal the document included as Attachment #3 in which the Vendor shall certify that it developed the bid proposal independently. The Vendor shall also certify that no relationship exists or will exist during the contract period between the Vendor and the Division that interferes with fair competition or is a conflict of interest. The Division reserves the right to reject a bid proposal or cancel the award if, in its sole discretion, any relationship exists that could interfere with fair competition or conflict with the interests of the Division.

4.2.12 Authorization to Release Information

The Vendor shall sign and submit with the bid proposal the document included as Attachment #5 in which the Vendor authorizes the release of information to the Division.

4.2.13 Firm Bid Proposal Terms

The Vendor shall guarantee in writing the availability of the services offered and that all bid proposal terms, including price, will remain firm a minimum of ninety (90) days following the deadline for submitting proposals.

4.3 Cost Proposal

The Vendor shall provide a separate itemized cost proposal for the proposed services.

SECTION 5 EVALUATION OF BID PROPOSALS

5.1 Introduction

This section describes the evaluation process that will be used to determine which bid proposal provides the greatest benefits to the Division. The evaluation process is designed to award the contract not necessarily to the Vendor of least cost, but rather to the Vendor with the best combination of attributes to perform the required services.

5.2 Evaluation Committee

The Division intends to conduct a comprehensive, fair and impartial evaluation of bid proposals received in response to this RFP. The Division will use an Evaluation Committee to review and evaluate the proposals.

5.3 Evaluation Criteria

The Evaluation Committee will evaluate all proposals and make an award using the following criteria, which are listed in no particular order.

Scope of Work	30%
Qualification of Contractor	15%
Project Cost	20%
Reporting and Time Frames	20%
Evaluation Committee's Judgment of the Proposal	15%

The Division may request clarification of any proposal at any time after the initial evaluation. This request may include an interview and a presentation of the proposal to the evaluation committee.

SECTION 6 CONTRACT TERMS AND CONDITIONS

6.1 Contract Terms and Conditions

The contract that the Department expects to award as a result of this Request for Proposal will be based upon the bid proposal submitted by the successful Vendor and this solicitation. The contract between the Department and the successful Vendor shall

be a combination of the specifications, terms and conditions of the Request for Proposal, including the terms contained in the offer of the Vendor contained in the technical and cost proposals, written clarifications or changes made in accordance with the provisions herein, and any other terms deemed necessary by the Division.

The contract terms mention in this RFP are not intended to be a complete listing of all contract terms but are provided only to enable Vendors to better evaluate the costs associative with the RFP and the potential resulting contract. Vendors should plan on such terms being included in any contract awarded as a result of this RFP. All costs associated with complying with these requirements should be included in the revenue proposal or any pricing quoted by the Vendor.

Attachment #6 is a copy of the proposed final Services Contract.

By submitting a proposal, each Vendor acknowledges its acceptance of these specifications, terms and conditions without change except as otherwise expressly stated in its proposal. If a Vendor takes exception to a provision, it must state the reason for the exception and set forth in its proposal the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the RFP may be deemed non-responsive by the Division, in its sole discretion, resulting in possible disqualification of the proposal. The Department reserves the right to either award a contract without further negotiation with the successful Vendor or to negotiate contract terms with the selected Vendor if the best interests of the Department would be served.

6.2 Contract Length

The term of the contract will commence on the date listed in the Procurement Timetable, Section 2.4.

ATTACHMENT #1REQUEST FOR PROPOSAL
MANDATORY NOTICE OF INTENT TO BID FORM

If you are considering or intend to submit a proposal for the RFP No. 2007-02, you **must complete the section below and return this form on or before March 2, 2007.**

The Intent to Bid Form does not obligate the Vendor to submit a proposal. However, it does protect the Vendor's right to submit a proposal.

Send to:

Nicole Gehl, Operations Manager
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, IA 50021

Iowa Alcoholic Beverages Division

RFP No. 2007-02

Web Development Services

Submitted by:	
Firm Name:	
Address:	
City, State, Zip:	
Telephone:	
Fax:	
E-mail Address:	
Signed:	
Print Name:	
Title:	
Date:	
Is this business listed as a targeted small business?	

Authorized Signature

Date

ATTACHMENT #2

Date: _____

Lynn Walding
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, IA 50021

Re: Request for Proposal Number 2007-02
PROPOSAL CERTIFICATION

Dear Mr. Walding:

I hereby certify that the contents of the proposal submitted on behalf of _____ in response to the Request for Proposal Number 2007-02 for Web development services are true and accurate. I also hereby certify that _____ has not made any knowingly false statements in its proposal.

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

Printed Name of Vendor Organization

Name and Title of Authorized Representative

Date

ATTACHMENT #3**Date:** _____

Lynn Walding
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, IA 50021

Re: Request for Proposal 2007-02

CERTIFICATION OF INDEPENDENCE AND NO CONFLICT OF INTEREST

Dear Mr. Walding:

By submitting a proposal in response to the Request for Proposal Number 2007-02 for Web development services ("RFP"), for the Iowa Alcoholic Beverages Division ("Division"), the undersigned certifies the following:

1. The proposal has been developed independently, without consultation, communication or agreement with any employee or consultant to the Division who has worked on the development of this RFP, or with any person serving as a member of the evaluation committee.
2. The proposal has been developed independently, without consultation, communication or agreement with any other Vendor or parties for the purpose of restricting competition.
3. No attempt has been made or will be made by _____ to induce any other Vendor to submit or not to submit a proposal for the purpose of restricting competition.
4. No relationship exists or will exist during the contract period between _____ and the Division that interferes with fair competition or that creates a real or perceived conflict of interest. A Vendor is not disqualified simply by virtue of a pre-existing contract with the Division.

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

Printed Name of Vendor Organization_____
Name and Title of Authorized Representative_____
Date

ATTACHMENT #4

Date: _____

Lynn Walding
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, IA 50021

Re: Request for Proposal No. 2007-02
Web Development Services

Dear Mr. Walding:

By submitting a proposal in response to the Iowa Alcoholic Beverages Division RFP No. 2007-02, the undersigned certifies the following:

1. I certify that, to the best of my knowledge, _____ and all of its principles: (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or agency; (b) have not within a three year period preceding this proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes or commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are not presently indicted for or other criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this proposal had one or more public transactions (federal, state, or local) terminated for cause.
2. This certification is a material representation of fact upon which the Division has relied upon when this transaction was entered into. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available, the Division may pursue available remedies including suspension, debarment, or termination of the contract.

Sincerely,

Printed Name of Vendor Organization

Name and Title of Authorized Representative

Date

ATTACHMENT #5**Date:** _____Lynn Walding
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, IA 50021RE: Request for Proposal 2007-02
AUTHORIZATION TO RELEASE INFORMATION

Dear Mr. Walding:

_____ hereby authorizes the Iowa Alcoholic Beverages Division (Division) to obtain information regarding its performance on other contracts, agreements or other business arrangements, its business reputation, and any other matter pertinent to evaluation and the selection of a successful Vendor in response to Request for Proposal Number 2007-02.

The Vendor acknowledges that it may not agree with the information and opinions given by such person or entity in response to a reference request. The Vendor acknowledges that the information and opinions given by such person or entity may hurt its chances to receive contract awards from the Division or may otherwise hurt its reputation or operations. The Vendor is willing to take that risk.

The Vendor hereby releases, acquits, and forever discharges the State of Iowa, the Division, their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions, and references obtained by the Division in the evaluation and selection of a successful Vendor in response to Request for Proposal Number 2007-02.

The Vendor authorizes representatives of the Division to contact any and all of the persons, entities, and references which are, directly or indirectly, listed, submitted, or referenced in the undersigned's proposal submitted in response to Request for Proposal Number 2007-02.

The Vendor further authorizes any and all persons and entities to provide information, data, and opinions with regard to the undersigned's performance under any contract, agreement, or other business arrangement, the undersigned's ability to perform, the undersigned's business reputation, and any other matter pertinent to the evaluation of the undersigned. The undersigned hereby releases, acquits and forever discharges any such person or entity and their officers, directors, employees and agents from any and all liability whatsoever, including all claims, demands and causes of action of every nature and kind affecting the undersigned that it may have or ever claim to have relating to information, data, opinions and references supplied to the Division in the evaluation and selection of a successful Vendor in response to Request for Proposal Number 2007-02.

A photocopy or facsimile of this signed Authorization is as valid as an original.

Sincerely,

Printed Name of Vendor Organization_____
Name and Title of Authorized Representative_____
Date

ATTACHMENT #6 SERVICES CONTRACT

This Agreement for Web development services (this Agreement), made and effective as of [DATE], by and between the Iowa Alcoholic Beverages Division (Division) and [VENDOR], a corporation organized under the laws of the State of Iowa (Vendor). The parties agree as follows:

SECTION 1. PURPOSE.

The parties have entered into this Agreement for the purpose of retaining Vendor to provide professional services and other deliverables in connection with the development and implementation of the Electronic Licensing system (System) for the Division and the State of Iowa (the State). The Vendor shall collaborate with representatives from the ABD to rebuild and reengineer the existing System to produce a fully-functioning, standardized, maintainable and expandable System.

SECTION 2. DEFINITIONS.

2.1 “Acceptance” means that the Division has determined that one or more deliverables satisfy the Division’s Acceptance Tests. Final Acceptance means that the Division has determined that all deliverables satisfy the Division’s Acceptance Tests. Non-acceptance means that the Division has determined that one or more Deliverables have not satisfied the Division’s Acceptance Tests.

2.2 “Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Division and against which the Deliverables shall be evaluated for purposes of Acceptance or Non-acceptance thereof.

2.3 “Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of the Division to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Division, as determined by the Division in its sole discretion. Acceptance Testing may include unit testing to check individual components, system testing on an integrated basis, user-acceptance testing, stress testing, and Documentation review.

2.4 “Confidential Information” means subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “disclosing party”) to the other party (a “receiving party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Confidential Information does not include any information that: (i) was rightfully in the possession of the receiving party from a source other than the disclosing

party prior to the time of disclosure of the information by the disclosing party to the receiving party; (ii) was known to the receiving party prior to the disclosure of the information by the disclosing party; (iii) was disclosed to the receiving party without restriction by an independent third party having a legal right to disclose the information; (iv) is in the public domain or shall have become publicly available other than as a result of disclosure by the receiving party in violation of this Agreement or in breach of any other agreement with the disclosing party; (v) is independently developed by the receiving party without any reliance on Confidential Information disclosed by the disclosing party; (vi) is disclosed or is required or authorized to be disclosed pursuant to law, rule, regulation, subpoena, summons, or the order of a court, lawful custodian, governmental agency or regulatory authority, or by applicable regulatory or professional standards; or (vii) is disclosed by the receiving party with the written consent of the disclosing party.

2.5 “Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a Deliverable to conform to or meet an applicable Specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

2.6 “Deliverables” mean the services, Software, goods and materials to be provided by Vendor to the Division under this Agreement. Unless otherwise expressly provided in this Agreement, Deliverables shall include any and all Documentation, designs, copy, artwork, data, information, graphics, images, templates, screen designs, processes, inventions, techniques, methodologies, materials, plans, papers, forms, reports, studies, source code, object code, utilities and routines, devices, modifications, content, concepts, and all other tangible and intangible works, materials and property of every kind and nature related to the Deliverables or otherwise produced or provided by Vendor in connection with this Agreement.

2.7 “Documentation” means any and all technical information, commentary, design documents, code and test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables.

2.8 “Enhancements” means any and all updates, upgrades, patches, additions, modifications or other enhancements to the Software, any new releases of Software, and all changes to the Documentation and source code as a result of such Enhancements.

2.9 “Project” means the project to develop and implement the System and all services and Deliverables to be performed and provided by Vendor as described in this Agreement.

2.10 “Project Completion Date” means the date by which Vendor must complete all work and provide all Deliverables pursuant to this Agreement. For purposes of this Agreement, the Project Completion Date is [DATE].

2.11 “Project Plan” means the Project Plan attached hereto as Schedule B, as modified from time to time upon written agreement of the parties. The Project Plan is incorporated into this Agreement by this reference as if fully set forth in this Agreement. The Project Plan shall originally be created and submitted by the Successful Vendor after the execution of this contract.

2.12 “Software” means all software programs and components listed in Schedule A, and all related Documentation, Enhancements, Source Code, object code and copies thereof or shall have the meaning ascribed to that term in the Software License Agreement.

2.13 “Software License Agreement” means the Software License Agreement by and between Vendor and the Division dated [DATE].

2.14 “Source Code” means the human-readable source code for the Software and includes source code listings, compile instructions, programmer’s notes, and commentary for or related to the source code or Software.

2.15 “Specifications” mean all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Agreement, the Software License Agreement, Documentation, the RFP (as defined below), and the Proposal (as defined below). Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Agreement by reference as if fully set forth in this Agreement.

2.16 “Statement of Work” means Schedule A to this Agreement, which describes, among other things, the Deliverables and services to be provided by Vendor under this Agreement and the compensation associated therewith. The Statement of Work is incorporated into this Agreement by this reference as if fully set forth in this Agreement.

2.17 “System” means the Iowa Alcoholic Beverages Division Electronic Licensing application.

2.18 “Third Party” means a person or entity (including, but not limited to any form of business organization, such as a corporation, partnership, limited liability corporation, association, etc.) that is not a party to this Agreement.

SECTION 3. DOCUMENTS INCORPORATED.**3.1 Incorporation**

The Division's Request for Proposal No. 2007-02 for Web site application rewrite services (RFP) and Vendor's proposal dated [DATE], in response to the RFP (Proposal), together with any clarifications, attachments, appendices, or amendments to the RFP and Proposal are incorporated into this Agreement by this reference as if fully set forth in this Agreement; provided, however, that none of Vendor's proposed revisions or modifications to the sample [Services Contract] attached to the RFP shall be incorporated into this Agreement unless expressly set forth herein.

3.2 Contractual Obligations

The terms and conditions of the RFP and of the Proposal are made contractual obligations of Vendor, except that any proposed revisions or modifications made by Vendor to the RFP Proposal shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Vendor or the Division hereunder, unless expressly stated herein.

3.3 Preference

In the case of any inconsistency or conflict between the specific provisions of this document, the RFP or the Proposal, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of this document and any schedules, exhibits or other attachments; second, by giving preference to the specific provisions of the RFP; and third, by giving preference to the specific provisions of the Proposal.

3.4 No Inconsistency

The references to the parties' obligations, which are contained in this document, are intended to change, modify, supplement or clarify the obligations as stated in the RFP and the Proposal. The failure of the parties to make reference to the terms of the RFP or Proposal in this document shall not be construed as creating a conflict and will not relieve Vendor of the contractual obligations imposed by the terms of the RFP and the Proposal. Terms offered in the Proposal, which exceed the requirements of the RFP, shall not be construed as creating an inconsistency or conflict with the RFP or this document. The contractual obligations of the Division cannot be implied from the Proposal.

SECTION 4. SCOPE OF WORK.**4.1 Scope of Work**

Vendor shall provide the Division with the Deliverables in accordance with the Statement of Work (Schedule A) and all other terms and conditions of this Agreement.

4.2 Amendments to Statement of Work

The parties agree that the Statement of Work may be amended, modified, or replaced at any time during the term of this Agreement upon the mutual written consent of the parties.

4.3 Performance Standards. The parties agree that the performance standards and related payment, monitoring and review provisions set forth in Schedule C are incorporated herein by this reference as if fully set forth in this Agreement. The parties shall mutually develop and include Schedule C in pursuant to 11 Iowa Admin. Code 107.

SECTION 5. COMPENSATION AND ADDITIONAL RIGHTS AND REMEDIES.

5.1 Compensation

In consideration of Vendor providing the Division with the Deliverables in accordance with the terms and conditions of this Agreement, Vendor shall be entitled to receive the fees or other compensation associated with such Deliverables as specified in Schedule A, subject to all terms and conditions of this Agreement, including, without limitation Section 5.2 (Invoices) and Section 5.3 (Retention). The Division shall not be obligated to pay any other compensation, fees, expenses, costs, charges or other amounts to Vendor in connection with this Agreement. All fees and compensation payable hereunder to Vendor are fixed, not-to-exceed amounts, and Vendor shall not be compensated on a time and materials basis. It is expressly understood and agreed that in no event will the total fees or compensation to be paid hereunder exceed the sum of [\$ AMOUNT]. Vendor is not entitled to payment for any Deliverables provided under this Agreement if the Division reasonably determines that any Deliverables or services have not been satisfactorily or completely delivered or performed, or that any Deliverable fails to meet or conform to any applicable Specifications. No payment, including final payment, shall be construed as acceptance of any Deliverables with Deficiencies or incomplete work, and Vendor shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. Vendor's acceptance of the last payment from the Division shall operate as a release of any and all claims related to this Agreement that Vendor may have or be capable of asserting against the Division or the State. No advance payments shall be made for any Deliverables provided by Vendor pursuant to this Agreement.

5.2 Invoices

Upon receipt of Acceptance from the Division with respect to one or more Deliverables, or completion of services by Vendor, Vendor shall submit an invoice to the Division requesting payment of the fees or other compensation specified in Schedule A associated with [such Deliverable(s) or such services], less the Retained Amount(s) to be withheld in accordance with Section 5.3. All invoices submitted by Vendor shall comply with all applicable rules concerning payment of such fees, charges or other claims and shall contain appropriate documentation as necessary to support the fees or charges included on the invoice and all information reasonably requested by the

Division. The Division shall pay all approved invoices in arrears and in conformance with Iowa Code section 8A.514 and 11 Iowa Admin. Code 41.1(2). The Division may pay in less than sixty (60) days, as provided in Iowa Code section 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Division shall have the right to dispute any invoice submitted for payment and withhold payment of any disputed amount if the Division believes the invoice is inaccurate or incorrect in any way.

5.3 Retention

To secure Vendor's performance under this Agreement, the Division shall retain 50% of the fees or other compensation associated with each Deliverable and payable hereunder shall be (the "Retained Amounts"). The Retained Amounts shall be payable upon the Division's delivery of Final Acceptance to Vendor or the expiration of any applicable warranty period or other event or timing for release, such as System turnover, subject to the terms and conditions hereof.

5.4 Erroneous Payments and Credits

Vendor shall promptly pay or refund to the Division the full amount of any overpayment or erroneous payment within ten (10) business days after either discovery by the Vendor or notification by the Division of the overpayment or erroneous payment. In the event Vendor fails to timely pay or refund any amounts due the Division under this section 5.4, the Division will charge interest of one percent (1%) per month compounded on the outstanding balance after the date payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Division may, in its sole discretion, elect to have Vendor apply any amounts due to the Division under this Section 5.4 against any amounts payable by the Division under this Agreement or the Software License Agreement.

5.5 Reimbursable Expenses

There shall be no reimbursable expenses associated with this Agreement separate from the compensation referred to in this section. Vendor shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Vendor.

5.6 Set-off Against Sums Owed by Vendor

In the event that Vendor owes the Division or the State any sum under the terms of this Agreement, any other agreement, pursuant to a judgment, or pursuant to any law, the Division may set off such sum against any sum invoiced to the Division by Vendor in the Division's sole discretion unless otherwise required by law. Amounts due to the Division as liquidated damages or any other damages may be deducted by the Division without a judgment or any court action from any money or sum payable by the Division to

Vendor pursuant to this Agreement or any other agreement between Vendor and the Division.

5.7 Withholding Payments

In addition to pursuing any other remedy provided herein or by law, the Division may withhold compensation or payments to Vendor, in whole or in part, without penalty to the Division or work stoppage by Vendor, in the event the Division determines that: (i) Vendor has failed to perform any of its duties or obligations as set forth in this Agreement [and/or the Software License Agreement]; or (ii) any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency. No interest shall accrue or be paid to Vendor on any compensation or other amounts withheld or retained by the Division under this Agreement.

5.8 Correction/Cure

The Division may correct any Deficiencies with respect to any Deliverable or cure any Vendor default under this Agreement without prejudice to any other remedy it may have if Vendor fails to correct such Deficiencies as required in this Agreement or if Vendor otherwise defaults or fails to perform any provision of the Agreement within the time period specified in a notice of default from the Division. The Division may provide or procure the services reasonably necessary to correct any Deficiencies or cure any Vendor default, in which event Vendor shall reimburse the Division for the actual costs incurred by the Division for such services (or for the reasonable value of the time expended by any Division or State employees who provide such services). In addition, Vendor shall cooperate with the Division or any Third Parties retained by the Division who assist in curing such default, including by allowing access to any pertinent materials or work product of Vendor.

5.9 Monitoring and Review

The Division shall monitor and review Vendor's performance under this Agreement to ensure compliance with this Agreement. Such review and monitoring shall include the Division's assessment of invoices and reports furnished by Vendor pursuant to this Agreement.

SECTION 6. ACCEPTANCE TESTS, PROJECT MANAGEMENT, KEY PERSONNEL AND LIQUIDATED DAMAGES.

6.1

Vendor shall commence and complete all work and provide all Deliverables in accordance with the deadlines, timelines, terms, conditions, Specifications and other requirements specified in this Agreement, including those which may be specified in the Statement of Work and the Project Plan.

6.2

All Deliverables shall be subject to the Division's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be

performed by Vendor with respect to any Deliverable, Vendor shall deliver a written notice to the Division certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Division to conduct Acceptance Tests; provided, however, that Vendor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Division. At the Division's request, Vendor shall assist the Division in performing Acceptance Tests at no additional cost to the Division. Within a reasonable period of time after the Division has completed its Acceptance Testing, the Division shall provide Vendor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Division determines that a Deliverable satisfies its Acceptance Tests, the Division shall provide Vendor with notice of Acceptance with respect to such Deliverable. If the Division determines that a Deliverable fails to satisfy its Acceptance Tests, the Division shall provide Vendor with notice of Non-acceptance with respect to such Deliverable. In the event the Division provides notice of Non-acceptance to Vendor with respect to any Deliverable, Vendor shall correct and repair such Deliverable and submit it to the Division within ten (10) days of Vendor's receipt of notice of Non-acceptance so that the Division may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Division determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Vendor has attempted to correct or repair pursuant to this Section 6.2, that such Deliverable fails to satisfy its Acceptance Tests, then the Division shall have the continuing right, in its sole discretion to: (i) require Vendor to correct and repair such Deliverable within such period of time as the Division may specify in a written notice to Vendor, (ii) refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable); (iii) accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Division's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Division to correct such Deficiencies; or (iv) terminate this Agreement and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 10 of this Agreement, the Division may terminate this Agreement pursuant to this Section 6.2 without providing Vendor with any notice or opportunity to cure provided for in Section 10. The Division's right to exercise the foregoing rights and remedies, including termination of this Agreement, shall remain in effect until Acceptance Tests are successfully completed to the Division's satisfaction. If the Division determines that all Deliverables satisfy its Acceptance Tests, the Division shall provide Vendor with notice of Final Acceptance with respect to such Deliverables. Vendor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not constitute or be construed as a waiver of any of the Division's rights to enforce the terms of this Agreement or require performance in the event the Division identifies, at any time, any Deficiencies with respect to such Deliverable(s).

6.3 Project Management and Reporting.

6.3.1 Project Manager. At the time of execution of this Agreement, Vendor shall designate, in writing, a Project Manager acceptable to the Division to serve until the expiration of this Agreement. Vendor will assign a Project Manager of a management level sufficient to assure timely responses from all Vendor personnel, timely completion of tasks and achievement of milestones, and whose resume and qualifications will be reviewed and approved by the Division prior to her or his appointment as Vendor's Project Manager. Vendor represents that its Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. Vendor's Project Manager shall be able to make binding decisions pursuant to this Agreement on behalf of and for Vendor. Any written commitment by Vendor's Project Manager and persons designated by her/him in writing for this purpose, within the scope of this Agreement, shall be binding upon Vendor. Vendor's Project Manager shall exercise her or his best efforts while performing under this Agreement. Vendor's Project Manager shall be at the Division's site as needed during the course of work under this Agreement and will be available either in person, by telephone or E-mail to respond promptly (in no event more than two [2] hours after receipt of a request or inquiry from the Division) during the business day to inquiries from the Division.

6.3.2 Review Meetings. Commencing with performance of this Agreement, Vendor's Project Manager shall meet weekly with the Division's project manager and representatives, unless otherwise mutually agreed, to discuss progress made by the Vendor in the performance of this Agreement. Vendor's Project Manager shall provide a status report, listing any problem or concern encountered since the last meeting. Vendor shall maintain records of such reports and other communications issued in writing during the course of its performance under this Agreement.

6.3.3 Reports. At the next scheduled meeting after which any party has identified in writing a problem, the Vendor shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. At a minimum, reports prepared by Vendor's Project Manager shall describe the previous week's activities, including problems encountered and their disposition, results of tests, whether or not deadlines were met, status of Deliverables, proposed changes to the Project Plan and any problems that may have arisen that need to be addressed before proceeding to the next activities. Vendor's proposed format and level of detail for its status reports shall be subject to the Division's approval.

6.3.4 Problem Reporting Omissions. The Division's receipt of acceptance of a problem report shall not relieve Vendor of any obligation under this Agreement or waive any other remedy under this Agreement or at law or equity that the Division may have. The Division's failure to identify the extent of a problem or Deficiency, or the extent of

damages incurred as a result of a problem or Deficiency, shall not act as a waiver of performance under this Agreement.

6.3.5 Change Order Procedure. The Division may at any time request a modification to the Statement of Work using a change order. The following procedures for a change order shall be followed.

6.3.5.1 Written Request. The Division shall specify in writing the desired modifications to the same degree of specificity as in the original Statement of Work.

6.3.5.2 Vendor's Response. Vendor shall submit to the Division a firm time and cost proposal and any proposed modifications to the Project Plan for the requested change order within five (5) business days of receiving the Division's change order request.

6.3.5.3 Acceptance of Vendor's Estimate. If the Division accepts Vendor's proposal, Vendor shall perform the modified services subject to the firm time and cost proposals included in Vendor's response and subject to the terms and conditions of this Agreement.

6.4 Key Personnel

The Division considers [VENDOR PROJECT MANAGER(S)] from Vendor to be essential to a successful project. Vendor shall not remove, reassign or substitute the individual(s) identified in this section except in the event of death, illness, retirement, disability, or termination from employment, conditions permitting absence from employment under the Family and Medical Leave Act of 1993, or in the event of the Division's written consent. If at any time during the term of this Agreement, the Division becomes dissatisfied with the performance of any individual who is part of Vendor's personnel, the Division shall notify Vendor of the reasons for such dissatisfaction and may request the replacement of such individual. Vendor will promptly investigate such request and the reasons for such dissatisfaction and report back to the Division on the corrective action Vendor believes is appropriate to address the Division's concerns and dissatisfaction. If the parties determine that such individual needs to be replaced, the replacement shall be effected promptly with a substitute individual having equal or greater ability, experience and qualifications than the departing individual.

6.5 Liquidated Damages

Vendor acknowledges and agrees that any delay or failure by Vendor to timely perform its obligations in accordance with this Agreement will delay and disrupt the Division's operations and will result in significant loss, expense and damages to the Division and the State. Furthermore, Vendor acknowledges and agrees that it may be extremely impractical and difficult to determine actual damages that the Division or the State may sustain. The following provisions in this Section 6.5 describe the liquidated damages Vendor shall pay to the Division as a result of non-performance hereunder by Vendor and that such liquidated damages are reasonable.

6.5.1 Vendor shall pay as liquidated damages \$100.00 a day for each and every day or portion thereof that Vendor fails to timely perform each Key Milestone (as defined

in the Project Plan) in accordance with the Project Plan. The parties acknowledge and agree that Vendor could incur liquidated damages for more than one Key Milestone if Vendor fails to timely perform its obligations by each date.

6.5.2 Vendor shall pay as liquidated damages \$50.00 a day for each and every day or portion thereof that Vendor fails to correct a Deficiency or respond to the Division's request for support or correction of a Deficiency within the time period specified for correction or response.

6.5.3 The assessment of liquidated damages shall not constitute a waiver or release of any other remedy the Division may have for Vendor's breach of this Agreement, including the Division's right to terminate this Agreement, and shall be entitled in its discretion to recover actual damages caused by Vendor's failure to perform any of its obligations under this Agreement. However, the Division will reduce such actual damages by the amounts of any liquidated damages received for the same events causing the actual damages. The assessment of liquidated damages shall be in addition to and not in lieu of such other remedies as may be available to the Division. It is expressly agreed that the waiver of any liquidated damages due the Division shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Any failure by the Division to demand liquidated damages within any period of time shall not constitute a waiver of such claim by the Division.

6.5.4 Amounts due the Division as liquidated damages may be deducted by the Division from any fees or other compensation payable to Vendor under this Agreement, or the Division may bill Vendor as a separate item therefore or otherwise request in writing Vendor's payment of liquidated damages assessed by the Division. Vendor shall promptly pay the Division any assessed liquidated damages, but in no event later than fifteen (15) days after the date of the Division's assessment or other written request for liquidated damages. At the Division's option, the Division may obtain payment of assessed liquidated damages through one (1) or more claims upon any performance bond furnished by Vendor.

SECTION 7. TERM.

The term of this contract is for [TERM] with the Division having three one-year options to extend the Agreement. The decision to extend the Agreement will be at the sole option of the Division. The initial term of the contract is from [TERM].

SECTION 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 Vendor represents and warrants that the Deliverables (in whole and in part) shall: (i) be free from material Deficiencies; and (ii) meet, conform to and operate in accordance with all Specifications and in accordance with this Agreement, during the term of this Agreement or for one year following the date on which the Division provides notice of Final Acceptance or on which final implementation of the System is complete and the Division is running the System in live production or specify some other event

which triggers commencement of the warranty period (the "Warranty Period"). During the term of this Agreement / Warranty Period, Vendor shall repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications at no cost to the Division within three (3) business days of or promptly upon receiving notice of such Deficiencies or failures from the Division. In the event Vendor is unable to repair, correct or replace such Deliverable to the Division's satisfaction, Vendor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Agreement, and the Division shall be entitled to pursue any other available contractual, legal or equitable remedy.

8.2 Vendor represents and warrants that it is fully aware of the Division's business requirements and intended uses for the Deliverables as set forth in the RFP, and the Deliverables shall satisfy such requirements in all material respects and are fit for such intended uses.

8.3 Vendor represents and warrants that: (i) all Deliverables shall be wholly original with and prepared solely by Vendor; (ii) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the services and Deliverables to the Division hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Division hereunder and under the Software License Agreement without violating any rights of any Third Party; and (iii) the Division shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

8.4 Vendor represents and warrants that: (i) the Deliverables (and all intellectual property rights therein and related thereto); and (ii) the Division's use of, and exercise of any rights with respect to, the Deliverables (and all intellectual property rights therein and related thereto), do not and shall not misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any Third Party. Vendor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Vendor shall inform the Division in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation or an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Vendor shall, at the Division's request: (i) procure for the Division the right or license to continue to use the Deliverable at issue; (ii) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (iii) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (iv) accept the return of the Deliverable at issue and refund to the Division all fees, charges and any other amounts paid by the Division under this

Agreement [and the Software License Agreement] with respect to such Deliverable. In addition, Vendor agrees to indemnify, defend, protect and hold harmless the Division and the State and their officers, directors, employees, officials and agents as provided in the Indemnification section of this Agreement. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Division and shall survive termination of this Agreement.

8.5 Vendor agrees that the Deliverables and all intellectual property rights and proprietary rights therein or related thereto, shall become and remain the sole and exclusive property of the Division and the State. Vendor hereby irrevocably transfers, assigns and conveys to the Division and the State all right, title and interest in and to such Deliverables and all intellectual property rights and proprietary rights therein or related thereto. Vendor shall take all actions as may be necessary or requested by the Division to carry out and effect such transfer, assignment and conveyance. Vendor represents and warrants that the Division and the State shall acquire good and clear title to such Deliverables, free from any claims, liens, security interests, encumbrances or other rights or interests of Vendor or of any Third Party. The Division and the State shall have the right to obtain and hold copyrights, patents or such other registrations or intellectual property protections as may be desirable or appropriate to the subject matter, and any extensions or renewals thereof. Vendor shall assist the Division and the State to obtain and secure copyrights, patents or other intellectual property rights, registrations or protections with respect to all such Deliverables in the United States and any other countries. Vendor agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to the Division and the State all the right, title and interest in and to such Deliverables. Vendor also agrees to waive and not assert any moral rights it may have with regard to such Deliverables. The Vendor shall not retain any property interests or other rights in and to such Deliverables and shall not use such Deliverables, in whole or in part, for any purpose, without the prior written consent of the Division and the payment of such royalties or other compensation as the Division deems appropriate. As the owner of such Deliverables, the Division and the State may, without limitation: (i) adapt, change, modify, edit or use the Deliverables as the Division or the State sees fit, including in combination with the works of others, prepare derivative works based on the Deliverables, and publish, display and distribute throughout the world any Deliverable(s) in any medium, whether now known or later devised, including, without limitation, any digital or optical medium, and (ii) make, use, sell, license, sublicense, or lease the Deliverables and any intellectual property rights therein or related thereto without payment of additional compensation to Vendor. For purposes of this Section 8.5, Deliverables shall be deemed to specifically exclude: Software that is licensed to the Division pursuant to the Software License Agreement.

8.6 All warranties made by Vendor in this Agreement, whether or not this Agreement specifically denominates Vendor's promise as a warranty or whether the warranty is created only by Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Division, shall

not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor.

8.7 Vendor represents, warrants and covenants that all services to be performed under this Agreement shall be performed in a professional, competent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Agreement and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Agreement, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Division notifies Vendor of any services performed in violation of this standard, Vendor shall re-perform the services at no cost to the Division, such that the services are rendered in the above-specified manner, or if the Vendor is unable to perform the services as warranted, Vendor shall reimburse the Division any fees or compensation paid to Vendor for the unsatisfactory services.

8.8 Vendor represents warrants and covenants that it has complied with, and shall comply with, all applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in connection with its performance under this Agreement and the Software License Agreement.

8.9 Vendor represents warrants and covenants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of its obligations under this Agreement.

8.10 Vendor represents and warrants that the Deliverables will comply with any applicable federal, state foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Agreement. Vendor represents and warrants that the Deliverables will comply with applicable provisions of Section 508 of the Rehabilitation Act of 1073, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board and the Iowa Department of Administrative Services-Information Technology Enterprise.

8.11 Vendor covenants that it will comply with and adhere to all Division and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and that Vendor will take all precautions necessary to prevent unauthorized access to the Division's and the State's systems, networks, computers, property, records, data, and information.

SECTION 9. INDEMNIFICATION.

9.1 Vendor and its successors and permitted assigns shall defend, protect, indemnify and hold harmless the Division, the State and their employees, officers, board members, agents, representatives, and officials ("Indemnitees") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnatee) directly or indirectly related to, resulting from, or arising out of this Agreement, including but not limited to any claims related to, resulting from, or arising out of:

9.1.1 Any violation or breach of any term or condition of this Agreement by or on behalf of Vendor, including, the furnishing or making by Vendor of any statement, representation, warranty or certification in connection with this Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete; or

9.1.2 Any act or omissions of Vendor, including, without limitation, any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Vendor, its officers, employees, agents, board members, subsidiaries, affiliates, contractors or subcontractors; or

9.1.3 Vendor's performance or attempted performance of this Agreement; or

9.1.4 Failure by Vendor or its employees, agents, officers, directors, subsidiaries, affiliates, contractors or subcontractors to comply with all applicable local, state, federal and international laws, rules, ordinances and regulations; or

9.1.5 Any failure by Vendor or its employees, agents, officers, directors, contractors or subcontractors to make all reports, payments and withholdings required by Federal and state law with respect to Social Security, worker's compensation, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State; or

9.1.6 Any alleged or actual misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any Third Party, including any patents, trademarks, trade dress, trade secrets, or copyrights of a Third Party.

9.2 Vendor's duties as set forth in this Section 9 shall survive the termination of this Agreement and shall apply to all acts or omissions taken or made in connection with the performance of this Agreement regardless of the date any potential claim is made or discovered by the Division or any other Indemnatee.

9.3 The Division will reasonably cooperate with Vendor to facilitate the defense of any action defended by Vendor. The Division reserves the right to participate in the defense of any such action.

9.4 Vendor shall be liable for any personal injury or damage to property caused by the fault or negligence of Vendor, its officers, directors, employees, agents and approved contractors or subcontractors.

SECTION 10. DEFAULT AND TERMINATION.

10.1 Termination for Cause by the Division

The Division may terminate this Agreement upon written notice for the breach by Vendor of any material term, condition or provision of this Agreement, if such breach is not cured within the time period specified in the Division's notice of breach or any subsequent notice or correspondence delivered by the Division to Vendor, provided that cure is feasible. Any time allowed for cure of a default shall not eliminate or reduce any liability Vendor may have for liquidated damages. In addition, the Division may terminate this Agreement effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

10.1.1 Vendor furnished any statement, representation, warranty or certification in connection with this Agreement, the Software License Agreement, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;

10.1.2 Vendor or any of Vendor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;

10.1.3 Dissolution of Vendor or any parent or affiliate of Vendor owning a controlling interest in Vendor;

10.1.4 Vendor terminates or suspends its business;

10.1.5 Vendor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited;

10.1.6 Vendor has failed to comply with any applicable international, federal, state, or local laws, rules, ordinances, regulations or orders when performing within the scope of this Agreement;

10.1.7 The Division determines or believes the Vendor has engaged in conduct that has or may expose the Division or the State to material liability;

10.1.8 Vendor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Vendor misappropriates or allegedly misappropriates a trade secret; or

10.1.9 Any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owning a controlling interest in Vendor:

10.1.9.1 Commencing or permitting a filing against it which isn't discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it

or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

10.1.9.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;

10.1.9.3 Making an assignment for the benefit of creditors;

10.1.9.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement [or the Software License Agreement]; or

10.1.9.5 Taking any action to authorize any of the foregoing.

The Division's right to terminate this Agreement shall be in addition to and not exclusive of other remedies available to the Division.

10.2 Termination for Convenience

Following thirty (30) days written notice, the Division may terminate this Agreement in whole or in part for convenience without the payment of any penalty or incurring any further obligation to Vendor. Termination for convenience can be for any reason or no reason at all.

10.3 Termination Due to Lack of Funds or Change in Law

Notwithstanding anything in this Agreement to the contrary, and subject to the limitations set forth below, the Division shall have the right to terminate this Agreement without penalty and without any advance notice as a result of any of the following:

10.3.1 The legislature or governor fail in the sole opinion of the Division to appropriate funds sufficient to allow the Division to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement; or

10.3.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Division to make any payment hereunder or under the Software License Agreement are insufficient or unavailable for any other reason as determined by the Division in its sole discretion; or

10.3.3 If the Division's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified; or

10.3.4 If the Division's duties, programs or responsibilities are modified or materially altered; or

10.3.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Division's ability to fulfill any of its obligations under this Agreement or the operation of the System.

The Division shall provide Vendor with written notice of termination pursuant to this section.

10.4 Limitation of the State's Payment Obligations

In the event of termination of this Agreement for any reason by either party (except for termination by the Division pursuant to Section 10.1), the Division shall pay only those amounts, if any, due and owing to Vendor for Deliverables for which Acceptance has been provided by the Division or for services actually and satisfactorily rendered up to and including the date of termination of this Agreement and for which the Division is obligated to pay pursuant to this Agreement. Payment will be made only upon submission of invoices and proper proof of Vendor's claim. Notwithstanding the foregoing, this Section 10.4 in no way limits the rights or remedies available to the Division and shall not be construed to require the Division to pay any compensation or other amounts hereunder or under the Software License Agreement in the event of Vendor's breach of this Agreement or the Software License Agreement or any amounts withheld by the Division in accordance with the terms of this Agreement. The Division shall not be liable, under any circumstances, for any of the following:

10.4.1 The payment of unemployment compensation to Vendor's employees;

10.4.2 The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;

10.4.3 Any costs incurred by Vendor in its performance of the Agreement, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Agreement and/or the Software License Agreement;

10.4.4 Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Agreement or the Software License Agreement;

10.4.5 Any taxes Vendor may owe in connection with the performance of this Agreement or the Software License Agreement, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

10.5 Vendor's Termination Duties

Upon receipt of notice of termination or upon request of the Division, Vendor shall:

10.5.1 Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Division may require.

10.5.2 Immediately cease using and return to the Division any property (including, without limitation, Division Property) or materials, whether tangible or intangible, provided by the Division to Vendor.

10.5.3 Cooperate in good faith with the Division and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.

10.5.4 Immediately return to the Division any payments made by the Division for services or Deliverables that were not rendered or provided by Vendor.

10.5 Termination for Cause by Vendor

Vendor may only terminate this Agreement upon written notice for the breach by the Division of any material term, condition or provision of this Agreement, if such breach is not cured within sixty (60) days of the Division's receipt of Vendor's written notice of breach.

SECTION 11. INSURANCE.

11.1 Insurance Policies

Vendor shall maintain in full force and effect, with insurance companies of recognized responsibility, at its expense, insurance covering its work of the type and in amounts required by this Agreement. Vendor's insurance shall, among other things, insure against loss or damage resulting from Vendor's performance of this Agreement and shall be subject to the approval of the Division. All such insurance policies shall remain in full force and effect for the entire term of this Agreement and shall not be canceled or changed without the Division's prior written consent.

Unless otherwise requested by the Division, Vendor shall, at its sole cost, cause to be issued and maintained in effect during the entire term of this Agreement not less than the insurance coverages set forth below each naming the Division and the State of Iowa as an additional insured or loss payee, as applicable:

Type of Insurance

General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$5 million
	Prod./Comp.	
	Aggregate	\$1 million
	Personal injury	\$1 million
Excess Liability, umbrella form	Each Occurrence	\$1 million
	Each Occurrence	\$1 million
	Aggregate	\$2 million
	Aggregate	\$2 million
Errors and Omissions Insurance	Each Occurrence	\$2 million
Property Damage	Each Occurrence	\$1 million
	Aggregate	\$2 million
Workers Compensation and Employer Liability	As Required by Iowa law	

11.2 Claims Provision

All insurance policies required by this Agreement must provide coverage for all claims arising from activities occurring during the term of the policy regardless of the date the claim is filed or expiration of the policy.

11.3 Certificates of Coverage

Certificates of the insurance described above shall be submitted to the Division within thirty (30) days after the effective date of this Agreement and shall be subject to approval by the Division. Vendor shall provide certificates for the coverage required. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days prior written notice to the Division.

11.4 No Limitation of Liability

Acceptance of the insurance certificates by the Division shall not act to relieve Vendor of any obligation under this Agreement. All insurance policies and certificates shall be issued only by companies authorized to transact business in the State of Iowa. It shall be the responsibility of Vendor to keep the respective insurance policies and coverages current and in force during the life of this Agreement.

11.5 Warranty

Vendor warrants that it has examined its insurance coverage to determine whether the Division and the State can be named as additional insureds without creating an adverse effect on Vendor's coverage.

11.6 Waiver of Subrogation Rights

Vendor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Division or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Division.

SECTION 12. CONTRACT ADMINISTRATION.**12.1 Independent Contractor**

Vendor is an independent contractor performing services for the Division. Vendor shall not hold itself out as an employee or agent of the Division. The Division shall not provide Vendor with office space, support staff, equipment or tools, or supervision beyond the terms of this Agreement. Neither Vendor nor any of its staff are eligible for any State employee benefits, including, but not limited to, retirement benefits, insurance coverage or the like. Vendor and its staff shall not be considered employees of the Division or the State for any purpose, including for federal or State tax purposes. The Division shall not withhold taxes on behalf of Vendor. Vendor shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.

12.2 Compliance with the Law and Regulations.

12.2.1 Vendor and its employees, agents, officers, directors, approved contractors and subcontractors shall comply with all applicable federal, state, international, and local laws, rules, ordinances, codes, regulations and orders when performing within the scope of this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment, the administrative rules of the Iowa Department of Management and the Iowa Civil Rights Commission which pertain to equal employment opportunity and affirmative action, laws relating to prevailing wages, occupational safety and health standards, prevention of discrimination in employment, payment of taxes, gift laws, lobbying laws, and laws relating to the use of targeted small businesses as subcontractors or suppliers. Vendor shall comply with any applicable reporting and compliance standards of the Department of Management regarding equal employment. Vendor may be required to submit its affirmative action plan to the Department of Management to comply with the requirements of 541 Iowa Admin. Code Chapter 4. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to Vendor's performance of this Agreement.

12.2.2 Vendor shall give notice to any labor union with which it has a bargaining or other agreement of its commitment under this section of the Agreement. Vendor shall make the provisions of this section a part of its contracts with any approved subcontractors providing goods or services related to the fulfillment or performance of this Agreement.

12.2.3 The Division may consider the failure of Vendor to comply with any law or regulation as a material breach of this Agreement.

12.3 Confidentiality

Vendor and its employees, agents, approved contractors and subcontractors may have access to Confidential Information, data, software, hardware, programs or other information or property possessed, owned or maintained by the Division or the State ("Division Property") to the extent necessary to carry out its responsibilities under the Agreement. Such Division Property shall at all times remain the property of the Division and/or the State. Vendor shall preserve the confidentiality of Division Property disclosed or furnished by the Division to Vendor and shall maintain procedures for safeguarding such property. Vendor must designate one individual who shall remain the responsible authority in charge of all Division Property collected, used, or disseminated by Vendor in connection with the performance of this Agreement. Vendor shall accept responsibility for providing adequate supervision and training to its agents, employees and any approved contractors and subcontractors to ensure compliance with the terms of this Agreement. Vendor and its employees, agents, and any approved contractors or subcontractors may be required by the Division to execute confidentiality or non-disclosure agreements to obtain access to certain Division Property. Vendor and its employees, agents, approved contractors and subcontractors shall not disclose,

publish, reproduce, disseminate or otherwise use any Division Property received, collected, maintained, or used in the course of performance of the Agreement except as permitted by the Division to enable Vendor to perform its obligations under this Agreement and except as required by applicable laws, rules or regulations, either during the term of this Agreement or thereafter. Vendor agrees to return any and all Division Property received, collected, accessed, maintained, created, or used in the course of the performance of the Agreement in whatever form it is maintained promptly at the request of the Division. In the event that Vendor receives a request for access to any Division Property, Vendor shall immediately communicate such request to the Division for consideration and handling.

Vendor shall indemnify the Division, the State and all other Indemnitees in the manner provided for indemnification elsewhere in this Agreement for a violation of this section. In the event of a breach of this section, the Division may terminate this Agreement immediately without notice of default and opportunity to cure. Vendor's obligations under this section shall survive expiration or termination of this Agreement.

12.4 Amendments

This Agreement may be amended in writing from time to time by mutual consent of the parties. Both parties must execute all amendments to this Agreement.

12.5 Third Party Rights

No person other than the parties hereto, their respective successors and permitted assigns, the State and Governmental Entities may rely on or derive any rights pursuant to or under this Agreement. This Agreement is intended to benefit only the Division, the State, Governmental Entities and the Vendor.

12.6 Choice of Law and Forum.

12.6.1 This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the state of Iowa, without giving effect to the choice of law principles thereof.

12.6.2 Any and all litigation or actions commenced in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Vendor irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; and (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts.

12.6.3 This provision shall not be construed as waiving any immunity to suit or liability, in state or federal court, which may be available to the Division or the State.

12.6.4 Vendor irrevocably consents to service of process by certified or registered mail addressed to the Vendor's designated agent.

The Vendor appoints [ATTORNEY NAME & ADDRESS] as its agent to receive service of process. If for any reason the Vendor's agent for service is unable to act as such or the address of the agent changes, Vendor shall immediately appoint a new agent and provide the Division with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Division. Nothing in this provision will alter the right of the Division to serve process in any other manner permitted by law.

12.6.5 This Section 12.6 shall survive termination of this Agreement.

12.7 Assignment and Delegation

This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the other party, except that the Division may assign this Agreement to any State agency or unit of State government that succeeds the Division's duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Division to which the Deliverables relate. For purposes of construing this clause, a transfer of a controlling interest in Vendor, a merger, sale or consolidation of Vendor, or a sale of substantially all of Vendor's assets shall be considered an assignment. Vendor agrees that it shall provide the Division with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Vendor and of any proposed merger, sale or consolidation of Vendor. Vendor agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Vendor or any affiliate thereof without the prior written consent of the Division.

12.8 Use of Third Parties

None of the services to be provided by Vendor pursuant to this Agreement shall be subcontracted or delegated to any Third Party without the prior written consent of the Division. The Division's consent shall not be deemed in any way to provide for the incurrence of any additional obligation of the Division, whether financial or otherwise. Any subcontract to which the Division has consented shall be in writing and shall in no way alter the terms and conditions of this Agreement. All subcontracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that the Division may deem necessary. Vendor is solely liable for any and all payments that may be due to a subcontractor pursuant to any subcontract. Vendor shall indemnify, defend and hold harmless the Division and the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Vendor's breach of any

subcontract into which it enters, including Vendor's failure to pay any and all amounts due to any subcontractor. All subcontracts shall contain provisions for the Division access to the subcontractor's books, documents, and records and for inspections of work, as required of Vendor herein. No subcontract or delegation of work shall relieve or discharge Vendor from any obligation, provision, or liability under this Agreement. Vendor shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any such contractor or subcontractor. Any action of a subcontractor, which, if done by Vendor, would constitute a breach of this Agreement, shall be deemed a breach by Vendor and have the same legal effect.

12.9 Integration

This Agreement and the Software License Agreement represents the entire Agreement between the parties concerning the subject matter hereof, and neither party is relying on any representation that may have been made which is not included in this Agreement or the Software License Agreement. The Division shall not be bound by any "shrink-wrap" agreement, "click-wrap" agreement, or "sneakwrap" agreement (or any other similar agreement) that may accompany or relate to a Deliverable. Vendor acknowledges that it has thoroughly read this Agreement and all related schedules, exhibits, and other documents and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Division on the basis of draftsmanship or preparation thereof.

12.10 Obligation beyond Agreement Term

This Agreement shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Agreement. Vendor's obligations under this Agreement which by their nature would continue beyond the termination of this Agreement, including, by way of illustration and not by limitation, those obligations set forth in Sections 4.1, 5.1 - 5.4, 5.6 - 5.82, 8.1 - 8.11, 9.1 - 9.4, 10.4 - 10.7, 11, 12.2, 12.3, 12.6, 12.8, 12.10 - 12.15, 12.19, 12.24, 12.28, 12.30, 12.32, 12.33, and 12.38 - 12.40 shall survive termination of this Agreement and/or termination of Support.

12.11 Supersedes Former Agreements

This Agreement supersedes all prior Agreements between the Division and Vendor for the goods and services provided in connection with this Agreement, except for the Software License Agreement.

12.12 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of the Division and Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto. No term or condition of this

Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

12.13 Notices.

12.13.1 Notices. Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the Division:

Nicole Gehl, Operations Manager
Iowa Alcoholic Beverages Division
1918 SE Hulsizer Road
Ankeny, IA 50021

If to Vendor:

[VENDOR CONTACT]

12.13.2 Any notice or communication sent by certified U.S. Mail under this Agreement shall be deemed given upon receipt as evidenced by the U.S. Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

12.13.3 From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

12.14 Cumulative Rights

The various rights, powers, options, elections and remedies of the Division and the State provided in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed the Division and the State by law, and shall in no way affect or impair the right of the Division or the State to pursue any other contractual, equitable or legal remedy to which the Division and the State may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged. The election by the Division or the State of

any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

12.15 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

12.16 Time is of the Essence

Time is of the essence with respect to Vendor's performance of its obligations under this Agreement. Vendor shall ensure that all personnel providing services to the Division are responsive to the Division's requirements and requests in all respects.

12.17 Authorization

Vendor represents and warrants that it has the right, power and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Vendor, enforceable in accordance with its terms.

12.18 Successors in Interest

All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the parties' hereto and their respective successors, assigns, and legal representatives.

12.19 Records Retention and Access

Vendor shall maintain books, documents and records that sufficiently and properly document Vendor's performance under this Agreement, including records that document all fees and other amounts charged during the term of this Agreement, for a period of at least five (5) years following the later of the date of final payment, termination or expiration of this Agreement, or the completion of any required audit. Vendor shall permit the Auditor of the State of Iowa or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, electronic or optically stored and created records or other records of Vendor relating directly or indirectly to Vendor's performance under this Agreement. Vendor shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit or examination of such books, documents and records. Vendor shall require its subcontractors to agree to the same provisions of this section.

12.20 Headings or Captions and Terms

The section headings or captions are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular

include the plural, and the word "or" has the inclusive meaning represented by the phrase "and/or." The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The words "thereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement.

12.21 Multiple Counterparts

This agreement shall be executed in two or more counterparts, any one of which shall be an original without reference to the others.

12.22 Not a Joint Venture

Nothing in this Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture (or other association of any kind or agent/principal relationship) between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Agreement.

12.23 Additional Provisions

The parties agree that if an Addendum, Rider, Schedule, Appendix or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

12.24 Further Assurances and Corrective Instruments

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

12.25 Obligations of Joint Entities

If Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this agreement, and for any default of such activities and obligations.

12.26 Force Majeure.

12.26.1 Neither Vendor nor the Division shall be liable to the other for any delay or failure of performance of this Agreement, and no delay or failure of performance shall constitute a default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by a "force majeure" and not as a result of the fault or negligence of a party.

12.26.2 As used in this Agreement, "force majeure" includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party effected and which, by the exercise of reasonable diligence, the party was

unable to anticipate or prevent. Failure to perform by a subcontractor or an agent of Vendor shall not be considered a "force majeure" unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Agreement. "Force Majeure" does not include financial difficulties of Vendor or any parent, subsidiary, affiliated or associated company of Vendor or claims or court orders that restrict Vendor's ability to deliver the goods or services contemplated by this Agreement.

12.26.3 If a "force majeure" delays or prevents Vendor's performance, Vendor shall immediately commence to use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be reasonably determined solely by the Division.

12.27 Material Breaches

The references in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.

12.28 Right of Inspection

Vendor shall allow the Division, or anyone designated by the Division, to inspect its facilities and books and records at all reasonable times in order to monitor and evaluate performance of this Agreement.

12.29 Taxes

Vendor shall be responsible for paying any taxes incurred by Vendor in the performance of this Agreement. The Division and the State are exempt from the payment of State sales and other taxes.

12.30 Title to Property

Title to all property (including Division Property) furnished by the Division and/or the State to Vendor to facilitate the performance of this Agreement shall remain the sole property of the Division and/or the State. All such property shall only be used by Vendor for purposes of fulfilling its obligations under this Agreement and shall be returned to the Division upon the earliest of completion, termination, or cancellation of this Agreement or at the Division's request. Vendor acknowledges that it shall acquire no interest or rights in and to such property. Except as expressly provided in this Agreement, Vendor shall not disclose or use such property for any purpose, including pledging or encumbering it, selling or using it for monetary gain, using it to compile mailing lists, solicit business or pursue other business activities, or otherwise. Title to all property purchased by Vendor, for which Vendor has been reimbursed or paid by the Division under this Agreement, shall pass to and vest in the Division and/or State, except as otherwise provided in this Agreement.

12.31 Exclusivity

This Agreement is not exclusive. During the term of this Agreement, the Division may obtain similar services from other service providers.

12.32 Award of Related Agreements

The Division may undertake or award supplemental or successor agreements for work related to this Agreement. Vendor shall cooperate fully with other contractors, consultants and other persons who may be engaged by the Division or the State in connection with this Agreement. Vendor will ensure that any of its contractors or subcontractors that have been approved by the Division will abide by this provision.

12.33 Sovereign Immunity

The Division and the State do not waive sovereign immunity by entering into this Agreement and specifically retain and reserve the defense of sovereign immunity and all defenses available to them under State and federal laws, rules and regulations for any claim arising out of or related to this Agreement.

12.34 Hardware and Equipment

In the event that any hardware and other equipment owned by Vendor and used in connection with this Agreement are subject to the security interest or a legal or equitable interest by a Third Party, Vendor shall insure in any such transactions that the Division shall be notified of a default occurring under the instrument and if Vendor does not cure the default within the time allowed, the Division may, in its sole discretion, cure the default by Vendor and assess or set off all costs associated with affecting cure, including but not limited to, the amount in default and reasonable attorneys fees against Vendor.

12.35 Disclaimer

All information contained in the RFP and any appendices or attachments thereto reflect the information available to the Division at the time the above-cited documents were prepared. The Division does not warrant the accuracy of any such information and shall not be liable for any errors or omissions, or the results of errors or omissions, which may be discovered, at any time, to exist in those documents.

12.36. Procurement by other Governmental Entities

Vendor acknowledges and agrees that other State agencies, Divisions, boards, commissions, establishments, units and other governmental entities (as defined in Iowa Code Section 8A.101) may procure services and Deliverables from Vendor under this Agreement.

12.37. Assignment of Third Party Warranties

Vendor hereby assigns and shall assign to the Division any and all existing and future warranties, indemnities and other benefits obtained or available from the licensor of any Third Party software or the manufacturer of any equipment or replacement parts provided or otherwise furnished in connection with this Agreement.

12.38. Attorney's Fees and Expenses

Subject to the other terms and conditions of this Agreement, in the event Vendor defaults in any obligations under this Agreement, Vendor shall pay to the Division all costs and expenses (including, without limitation, the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the Division) incurred by the Division in enforcing this Agreement or any of its rights and remedies with respect thereto.

12.39 Contract Compliance Audit

Vendor agrees that the Division or a representative of its selection may conduct a complete contract compliance audit at least once annually during the term of this Agreement and after termination or expiration of this Agreement to determine whether or not the Vendor is complying with the terms of this Agreement, criteria established for access to Division Property, State and federal laws regarding Confidential Information, and any other applicable laws and regulations. Vendor shall promptly comply with and correct any deficiencies noted in the audit report as audit exceptions and will promptly implement any recommendations reasonably requested by the Division or its representatives. Vendor shall not impose any charge or fee in connection with any contract compliance audit.

12.40 Care of Property

Vendor shall be responsible for the proper custody and care of any property, data, databases, software, interfaces, hardware, telecommunications lines and equipment, intellectual property and Division Property furnished by the Division for Vendor's use in connection with the performance of the Agreement. Vendor shall exercise its best efforts to prevent damage to all such property and shall, at the Division request, restore damaged property to the extent possible to its condition prior to the damage at the sole expense of Vendor. Such restoration shall be complete when judged satisfactory by the Division. In addition, at the Division's request, Vendor will reimburse the Division for any loss or damage to such property caused by Vendor, or any agent, contractor or subcontractor employed or utilized by Vendor. Vendor shall not take any action that would impair the value of, or goodwill associated with, the name, property and intellectual property rights of the Division and the State. Vendor shall obtain the prior advance written approval from the Division prior to Vendor's use of the name, marks or intellectual property rights of the Division or the State.

12.41 Notification of Events

Vendor shall notify the Division in writing if any of the following has been engaged in by or occurred with respect to Vendor or any corporation, shareholder or entity having or owing a controlling interest in Vendor:

12.41.1 Vendor files or permits the filing against it of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an

answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;

12.41.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; or

12.41.3 Making an assignment for the benefit of creditors; or

12.41.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Vendor's performance of its obligations under this Agreement

12.41.5 An order is entered approving an involuntary petition to reorganize the business of Vendor for all or part of its property; or

12.41.6 If a writ or warrant of attachment, execution, distraint, levy, possession or any similar process that may materially affect the operation of Vendor is issued by any court or administrative agency against all or any material portion of Vendor's property; or

12.41.7 Taking any action to authorize any of the foregoing.

IN WITNESS WHEREOF, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties have entered into the above Agreement and have caused their duly authorized representatives to execute this Agreement.

IOWA ALCOHOLIC BEVERAGES DIVISION
By: _____

[Vendor]
By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

STATEMENT OF WORK

The Vendor shall rewrite, rebuild and reengineer E-Licensing in a fashion that allows for the application to be maintained and expanded at a lower cost than would have been required by keeping the existing application. Further, the Vendor may use existing source code if the existing source code is fully-functioning, maintainable and expandable.

The Vendor shall rewrite the application to operate on a Microsoft IIS (Internet Information Server).

All programming shall be MS .NET 2.0 (or higher) compatible. The Vendor shall refrain from the following:

- The Vendor shall not use proprietary third party non-standard development tools.
- The Vendor shall not use SQL statements in place of Stored Procedures.
- The Vendor shall not hard code data driven program elements into the application.

If applicable, the Vendor shall develop and design the application's database(s) in C# and to operate on MS SQL Server 2005.

The Vendor shall provide, in detail, diagrams and descriptions outlining business continuity in the event of a disaster.

The Vendor shall provide the Division with a fully functioning parallel testing environment in order to test, experiment, assess and examine the work product.

The Vendor shall provide reasonable training and instruction to Division employees regarding the functionality of the new application.

The Vendor shall adhere to all applicable standards as defined by 11 Iowa Administrative Code Chapter 25 (Information Technology Operational Standards).

- http://das.ite.iowa.gov/standards/enterprise_it/index.html
- http://das.ite.iowa.gov/standards/enterprise_it/standard.html

Further, the Vendor shall comply with the Department of Administrative Services-Information Technology Enterprises EBSOA Best Practices.

- http://das.iowa.gov/tgb/IT_research/standards_best_prac.html

In addition to rewriting the existing application, the Vendor shall produce the following E-Licensing enhancements:

Schedule A (cont.)

The Vendor shall provide a new navigation concept or revise the existing navigation concept to make it easier for the user to work with the application. Specifically, the application shall support out-of-order user completion where allowed. The E-Licensing application has multiple processes, with multiple steps that must be completed sequentially by users with specific login privileges. The application needs to show the user their completion status after each step.

The Vendor shall create a function that will automatically send an e-mail(s) to the licensee based upon license status.

The Vendor shall create a function that identifies license types as temporary or permanent based on business rules (to be provided by the Division at a later date). This function will require an analysis of license effective dates.

SCHEDULE B**PROJECT PLAN**

(To be created and submitted by the Successful Vendor after the execution of this contract)

SCHEDULE C**PERFORMANCE STANDARDS**

(To be mutually develop and included in pursuant to 11 Iowa Admin. Code 107)